COMMENT.

The case of *Bate Refrigerating Co.* v. *Sulzberger* (15 Supreme Ct. Rep. 508) points to a defect in our patent laws, which seems to call for further legislative enactment. The act of 1870 (Rev. St. § 4886) provides that "no person shall be debarred from receiving a patent for his invention * * * by reason of its having been first patented * * * in a foreign country; provided * * * that the patent shall expire at the same time with the foreign patent." This act, passed in a spirit of comity to secure the protection of foreign inventions, was designed to throw open to our people the benefit of these inventions at the same time as in the country of their origin, and not to place our inventors in a worse position, for having obtained a foreign patent.

The complainant is the assignee of a patent on an American invention, which had been patented in Canada and England, for the space of five and fourteen years respectively, between the times of application and grant of patent in this country. Before the expiration of the American, but after that of the foreign patents, it brings a bill in equity for its infringement. It was held that although the policy of Congress in passing this bill was probably as given above, yet this case clearly comes within the statute, and although it works a hardship, yet the language is so obvious, as to leave no room for construction.

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Tilt v. *Illinois*, May Term, 1894, Ill. Supreme Court. In this case the Supreme Court of Illinois declared a statute, popularly known as the "eight hour law," which forbade the employment of women in factories or workshops, for more than eight hours a day, unconstitutional, as an arbitrary deprivation of persons of the liberty of entering into contracts for their labor, without due process of law, under guise of the police power.

The case turned on the point whether or not this law was arbitrary and class legislation. It was held to be so, as it was directed against women alone, and only such as were employed in factories and workshops. The court denied the power of the State to prohibit its citizens from entering into a certain employment, merely because it may be harmful to them, citing Tiedeman's Limitations of Police Powers: "There can be no more

justification for the prohibition of the prosecution of certain callings by women, because the employment will prove hurtful to *themselves*, than it would be for the State to prohibit men from working in the manufacture of white lead, because they are apt to contract lead poisoning."

This statute, however, does not prohibit women from engaging in such work for more than eight hours a day, because it may prove hurtful to *themselves;* it looks to the harm that may be entailed on posterity—to weakness that may strike at the very life of the State. Undoubtedly, if workers in white lead were apt to transmit lead poisoning to their descendants, the State in the legitimate exercise of the police powers might forbid this trade.

It is well known that factory work, the incessant jar and rumble of machinery, and excessive use of the sewing machine, are productive of serious and complicated disorders in women; that the birth rate in this class is lessened, the offspring weak and puny. It cannot be doubted that it is the duty of the State to protect posterity, and that any laws passed to promote this end are within the limits of the police powers and not arbitrary, and further, that the determination of their necessity is vested in the legislature (*Powell* v. *Pennsylvania*, 127 U. S. 678). The whole question seems to involve a balancing of public policy over against the right to contract, and the court has decided in favor of the latter.